

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center

4200 Wilson Blvd Stop 7100
Arlington VA 20598-7100
Staff Symbol: Ca
[Redacted]
Fax: 703-872-6113
[Redacted]

5890
November 22, 2013

[Redacted]
IMC Shipping Co. Pte. Ltd., Ayu Navigation Sdn Bhd
[Redacted]

NPFC Claim No. J05003-0034

Dear Mr. Davis:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number J05003-0031 that involved the, M/V SELENDANG AYU oil pollution incident for the total amount of \$8,411.98

This determination is based on an analysis of information submitted. Please see the attached determination for further details regarding the rationale for this decision.

You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you find that you will be unable to gather particular information within the time period, you may include a request for an extension of time for a specified duration with your reconsideration request. Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number J05003-0034.

Mail reconsideration request to:

Director
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Boulevard
Arlington, VA 20598-7100

Sincerely,

[Redacted Signature]
Claims Manager
U.S. Coast Guard

Enclosures: Claim Summary / Determination

CLAIM SUMMARY / DETERMINATION

Claim Number: J05003-0034
Claimant: IMC Shipping Co. Pte. Ltd., Ayu Navigation Sdn Bhd
Type of Claimant: Corporate
Type of Claim: Limit of Liability
Claim Manager: Gina Strange
Amount Requested: \$8,411.98

Incident

The M/V SELENDANG AYU (SELENDANG or vessel) was on a voyage from Seattle to China on December 06, 2004. While operating in adverse weather conditions, the crew shut down the main engine as a result of a casualty to the No. 3 cylinder. While attempting to repair the engine, the vessel drifted and eventually grounded on December 08, 2004 on a rocky shelf on the north shore of Unalaska Island, northeast of Spray Cape. The grounding ruptured the vessel's hull and bottom tanks, causing a discharge of approximately 330,000 gallons of bunkers into the waters off Unalaska Island.

Claimant & Claim

Claimants

Ayu Navigation Sdn Bhd (Ayu), IMC Shipping Co. Pte. Ltd. (IMC), Sveriges Angfartygs Assurans Forening (The Swedish Club), and International Group of Protection and Indemnity Clubs (International Group) (collectively "Claimants") are the responsible parties (RP) under the Oil Pollution Act of 1990 (OPA) and their insurers. Ayu owned the vessel, and IMC operated it. The Swedish Club, International Group, and the International Group's reinsurers were the subrogated underwriters.

Pursuant to 33 U.S.C. § 2708(a)(2), the Claimants presented a claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund) via the National Pollution Funds Center (NPFC) on December 07, 2007, asserting entitlement to a statutory limit on its liability for oil removal costs and damages resulting from the incident. On January 27, 2012, the NPFC determined that the Claimants were entitled to their statutory limit of liability, \$23,853,000. The Claimants now seek reimbursement for incurred removal costs and for damages paid to third parties above their liability.

Claim

The Claimants sent a letter to the National Pollution Funds Center (NPFC) dated December 6, 2007 outlining their claims for which they were seeking reimbursement for damages they paid to third parties. Attached to this letter were exhibits, including a summary of claimed costs.¹ By letter dated March 21, 2012, Claimants submitted a document entitled Third Party Claim Detail that listed all costs paid to third party claimants plus RP costs paid to certain vendors' services.

This claim before the Fund seeks reimbursement of amounts Claimants paid for travel expenses incurred by T. Schroder of the Swedish Club. In this claim, Claimants seek reimbursement of \$8,411.98 for "TDX and Ounalashka settlement expenses"² which were paid to The Swedish Club.

¹ Initial submission, tab 2

² Claimants March 21, 2012 letter with attached Third Party Claim Detail. Claimant/Vendor: The Swedish Club.

Applicable Law

The Oil Pollution Act of 1990 provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C §2702 (a).

A responsible party "may assert a claim for removal costs and damages under section 2713 of this title only if the responsible party demonstrates that" it is entitled to a limitation of liability under §1004 of OPA. 33 U.S.C. §2708(a)


Responsible parties who have demonstrated entitlement to a limit of liability may submit claims to the Oil Spill Liability Trust Fund for removal costs and damages incurred by the responsible party, plus amounts paid by the responsible party for claims asserted under section 1013 of OPA.

The Fund shall be available to the President for the payment of claims for uncompensated removal costs determined by the President to be consistent with the National Contingency Plan or uncompensated damages. 33 U.S.C. § 2712(a)(4). Covered damages under U.S.C. §2702 (b)(2)(A) – (F) are loss of or damage to natural resources, damage to real or personal property, loss of subsistence use, loss of net government revenues, loss of profits or impairment of earning capacity and net costs to provide increased or additional public services.

Determination

The claimed costs are costs the RP incurred through payment of its insurer's travel expenses. According to the limited amount of information provided in the claim, T. Schroder traveled for the Swedish Club to provide settlement services for the TDX and Ounalashka Tribe claims. Invoice pages provided (Bates TSC 1 and TSC 2)³ show transportation and hotel costs. The claimed costs are handwritten in as the costs presented on the invoices are not in U.S. dollars.

Costs expended to settle with third party claimants are not removal costs or damages as defined under OPA. Because this claim seeks reimbursement of costs that are not specifically authorized by OPA, they cannot be paid by the Fund. This claim is denied.

Claim Supervisor: Robert Rioux 

Date of Supervisor's review: 11/22/2013

Supervisor Action: Denial Approved.

Supervisor's Comments:

³ Claimants March 21, 2012 letter with attached Third Party Claim Detail, Notebook 4.